IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION NO. 12924 OF 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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PATEL SURESHBHAI JESHABHAI & ANR. - Petitioner(s)
Versus
PATEL FULABHAI SHANKARBHAI & ORS. - Respondent(s)

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Appearance :
SHRI BRIJESH S. PATEL for Petitioner(s) : 1 - 2.
SHRI K.K. PANDEY for Respondent(s) : 1.
SHRI PREMAL R. JOSHI for Respondent(s) : 2 - 5.
SHRI N.D. GOHIL, AGP for Respondent(s) : 6 - 8.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 28/11/2006

ORAL JUDGMENT

1. The petitioners, *vide* a registered Sale Deed dated 4th June, 1981, purchased the land admeasuring 1 Acre 22 Gunthas of Block No.6, Village Khanpur, Taluka &

District: Baroda and thereafter, their names were mutated on 7th August, 1981 under Mutation Entry No.533. Almost after about four years, the Deputy Collector took up the matter in Revision Case No.116 of 1984-85. After giving appropriate notice and opportunity of hearing to the petitioners, he observed in his final order dated 19th November, 1985 (Annexure-A) that no such entry could be made in favour of the petitioners as the sale was creating fragmentation, the petitioners did not possess any agricultural land of their own within the periphery of 15 kms. of the purchased land and as the entry was contrary to law, he ordered that the entry be set aside.

1.1 The petitioners, being aggrieved by the said order, preferred revision to the Secretary (Dispute/Appeals), who, by his final order dated 1st November, 1989, confirmed the order passed by the Deputy Collector and required the subordinate authority to proceed in accordance with law. It appears that thereafter, the Mamlatdar registered proceedings under Section 84C of the Bombay Tenancy and Agricultural Lands Act, 1948 (“the Agricultural Tenancy Act” for short) and by his final order dated 4th October, 1991, he observed that by the said sale/purchase in favour of the petitioners, no fragmentation was caused and that the

proceedings could not be initiated after such a long lapse of time; he, accordingly, withdrew the notice and held that there was no wrong in making the mutation entry; He, accordingly, directed restoration of the entry.

1.2 According to the petitioners, after 4th October, 1991, when they went to the Authorities for restoration of the entry, they were informed by the Additional Mamlatdar that unless the petitioners challenge the orders passed by the Deputy Collector and confirmed by the Secretary, such entry would not be restored. Under the advise of the Additional Mamlatdar, the petitioners are before this Court and they seek to challenge the orders contained in Annexure A and Annexure B dated 19th November, 1985 and 1st November, 1989 respectively.

2. The learned Counsel for the petitioners submits that the authority, specially, the Deputy Collector, was not entitled to look into the fact of fragmentation or validity of the sale, but, he could only consider the question relating to the validity of the entry. His further submission is that the Mamlatdar, being the competent authority for deciding the matter under Section 84C of the Agricultural Tenancy Act, if by an order

(Annexure-C), held in favour of the petitioners, that there was no violation, then, the orders contained in Annexure A and Annexure B would stand nullified. Explaining the delay, it was submitted that the petitioners, all through, *bona fide* believed that if the competent Revenue Authority had held in their favour, then, they were not required to challenge the orders contained in Annexure-A and Annexure-B.

3. Annexure A is an order passed in Revision by the Deputy Collector, Vadodara. He has come to the conclusion that the transaction of sale and purchase was leading to fragmentation of the holding of the seller. He also held that the transaction was invalid and as such, no entry in favour of the petitioners could be made. The said order was challenged by the petitioners before the Secretary, who also confirmed the order. The said order of confirmation was made on 1st November, 1989.

4. The present petition has been filed on 7th November, 1993, that is, almost after four years of the final order passed by the Secretary.

On one side, the petitioners challenge the action of the Deputy Collector on the ground that it was

initiated after lapse of four years and at the same time, say that they be allowed to challenge the action after four years. If the petitioners' petition is to be entertained after four years, then, some concession is always to be given to the Revenue Authority/Tribunal, that if they have no knowledge of the fact, then, they can't initiate proceedings. If certain illegalities or illegal orders are brought to the notice of the Revisional Authority and then they do not take any action or do not initiate any proceedings, then, certainly, delay can be counted upon, but, when the petitioners simply say that one could not exercise authority after four years, then, such an argument will have to be rejected. It is nobody's case that prior to issuance of notice to show cause, the authority knew about the entry or despite the fact being brought to its notice, the authority was sleeping over it and initiated proceedings after lapse of four years.

5. The delay attributed against the Revenue Authority cannot be made a ground in favour of the petitioners, but, on the other hand, the delay on the part of the petitioners would certainly be fatal to their case.

6. It is submitted that the Competent Authority, that is, the Mamlatdar, in the proceedings recorded under Section 84C, if had held that there was no breach or violation of Section 63 of the Agricultural Tenancy Act, then, that order should hold the field. In the opinion of this Court, not only the argument is bad, but, the exercise of powers by the Mamlatdar is bad and in fact, his order is perverse and perilously touches corruption. No Mamlatdar is given authority to sit over the orders of the Revisional Authorities. Once the Revisional Authorities held that there is violation of Section 63 and the transaction caused fragmentation, then, under the circumstances, any person subordinate to the Deputy Collector or the Secretary, could not say anything contrary to the order passed by the said authorities. The petitioners' strong reliance upon the order dated 1st November, 1989 passed by the Mamlatdar is misconceived.

7. I find no reason to interfere. The petition is dismissed. Rule is discharged. Interim relief, if any, is vacated. No costs.

[R.S.Garg, J.]

*kamlesh**